Quarterly Report

of the

ATTORNEY GENERAL

of

ALABAMA

For The Period

From October 1, 1957

Through December 31, 1957

VOLUME 89

JOHN PATTERSON, Attorney General

1957

QUARTERLY REPORT

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TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from October 1, 1957, through December 31, 1957, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama, 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or counfy solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

JOHN PATTERSON,
Attorney General.

JOHN PATTERSON
Attorney General

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OPINIONS

October 1, 1957

Hon. G. H. Boyd, Register
Tenth Judicial Circuit
Jefferson County Courthouse
Birmingham 3, Alabama

Registers—Constitution of Alabama 1901—Costs and Fees

1. Registers are not entitled to collect fees under the provisions of Act No. 742, General Acts of 1957, approved September 23, 1957 until the commencement of the registers' next term of office.

2. Act No. 742, supra, applies to the whole state and governs fees charged by registers on salary as well as a fee basis.

Opinion by Assistant Attorney General Gallion.

Dear Sir:

Your request for an official opinion bearing date of September 28, 1957 is as follows:

"With reference to our long distance telephone conversation today regarding Act number 742, S-309 Bill, which was approved by the Governor on September 23, 1957, amending Title 11, Section 27 of the 1940 Code of Alabama, pertaining to Registers' fees, copy of said Act enclosed, Section 3 of the aforesaid Act provides as follows, and I quote:

'This Act shall take effect immediately upon its passage and approval by the Governor or upon its otherwise becoming a law.'

"I would appreciate it very much if you will furnish me with an official opinion as to whether or not the Act becomes effective as of September 23, 1957, or whether or not the same is suspended until the new term which is January, 1959.

"For your information, I understand that practically all orders or decrees appointing the Registers over the State read as follows:

'It is ordered by the undersigned Judge that _____ be and he is hereby appointed Register of the Circuit Court, _____ Judicial Circuit of Alabama.'

"It appears to the writer that inasmuch as the Registers are not elected but are appointed by the various Judges, and not for any specified term, and that the Registers serve at the pleasure of the appointees, that the aforesaid Act number 742 should be effective as of the date the same is approved by the Governor."

Act Number 742, General Acts of 1957, approved September 23, 1957, to which you refer, simply amended Title 11, Section 27, Code of Alabama 1940, by providing an increased schedule of fees for registers. The act is a general act and, therefore, applies to the whole state.

Section 68 of the Alabama Constitution of 1901 reads in pertinent part as follows:

"The legislature shall have no power to grant . . . any extra compensation, fee, or allowance to any public officer, servant, or employee, agent or contractor, after service shall have been rendered or contract made, nor to increase or decrease the fees and compensation of such officers during their terms of office . . . . "

Section 281 of the Alabama Constitution of 1901 reads as follows:

"The salary, fees, or compensation of any officer holding any civil office of profit under this state or any county or municipality thereof, shall not be increased or diminished during the term for which he shall have been elected or appointed."

Amendment XCII of the Alabama Constitution of 1901 reads in pertinent part as follows:

"Any provisions of this constitution or amendments thereto to the contrary notwithstanding neither the legislature, nor any county of the state shall, by the imposition of new, different, and additional duties or otherwise, increase, or authorize the increase of, the salary, fees or other compensation of any officer of the state or of any county of the state, who is elected or appointed for a fixed term, during the term for which he is elected or appointed, regardless of whether such officer may be removed at the pleasure of the authority electing or appointing him or only upon impeachment . . . "

Title 13, Section 210, Code of Alabama 1940, providing for the appointment, term and removal of the register provides in part that "the register shall hold office for the term of the judge appointing him, but subject to removal by the judge for cause by order to be entered at length on the minutes of the court . . . ."

It is here noted that the emphasized portion of Amendment XCII, supra, referred to above, states that fees cannot be increased during the term of appointment of any officer of the state "regardless of whether such officer may be removed at the pleasure of the authority . . . appointing him."

A register of the circuit court is a public officer of the state. Quarterly Report, Attorney General, Volume 31, page 100.

In an opinion to the Honorable M. S. Butler, Sheriff of Montgomery County, and Honorable Nathan Chism, Sheriff of Tuscaloosa County, under date of February 17, 1956, reported in Quarterly Report, Attorney General, Volume 82, page 31, dealing in part with the analogous situation of sheriffs collecting an increased schedule of fees, this office held in part as follows:

"It has been contended that sheriffs who are on a salary basis by virtue of a constitutional amendment could not be affected by Sections 68, 281 and Amendment XCII, supra. Those sections prohibit a change in the salary, fees or other compensation of the officer. Salaried sheriffs may contend that since they are required to collect their fees and pay same into the county treasury, the increased schedule provided for in Act No. 571, supra, could not violate these sections of the Constitution; that the increased fees or compensation, if any, accrue to the county and not to the officers.

"In my opinion such contention is erroneous.

"Enabling statutes or constitutional provisions requiring salaried sheriffs to pay their fees into the county treasury, in my opinion, mean that said officers should collect and pay into the treasury those fees which said officer would collect if he were not on a salary by virtue of a constitutional amendment—the same fees he would collect in the absence of a constitutional amendment and an enabling act. Therefore, the right of a sheriff, who is on a salary because of a constitutional amendment or an enabling act, to charge and collect fees which are required to be paid into the county treasury, is tested by the right of such officer to so charge and collect if there were no special constitutional provision or enabling act. It is my opinion, therefore, that the fees required to be collected and paid into the county treasury by those sheriffs who are salaried are the same as those fees collected by nonsalaried sheriffs. Hence, Act No. 571, supra, as interpreted by the opinion of this office under date of November 22, 1955, supra, governs not only those fees to be collected by nonsalaried sheriffs, but also those fees charged and collected by salaried sheriffs and remitted to the county treasury."

The same reasoning noted in the above opinion would likewise be applicable in the instant case.

Therefore, you are herewith advised that by Act No. 742, General Acts 1957, approved September 23, 1957, your increased schedule of fees as register commences at the beginning of your new term of office.

Very truly yours.

JOHN PATTERSON
Attorney General

October 8, 1957

Hon. W. H. Quillin
Judge of the Law and Equity Court
Franklin County
Russellville, Alabama

Prisons and Prisoners—Corrections and Institutions, Department of—Words and Phrases—Costs and Fees.

1. Acts No. 60 and No. 61, General and Local Acts 1957, approved June 21, 1957 (Ms.), provide that (a) the Board of Corrections may pay costs even though a misdemeanor prisoner is not delivered to the penitentiary when the presiding judge certifies to said Board that the prisoner has been committed to the county jail; (b) no misdemeanor prisoner may be sent to the State penitentiary; and (c) the authority of county governing bodies to authorize the sending of hard labor county convicts to the penitentiary is repealed.

2. When costs are not paid or judgment confessed therefor, a court may not convert said costs to imprisonment in the county jail, but must in proper instances convert said costs to hard labor for the county under the provisions of Title 15, Section 342, Code of Alabama 1940.

3. The power of the court to impose additional hard labor for costs under the provisions of Title 15, Section 342, Code of Alabama 1940, discussed generally.

4. The enactment of Acts No. 60 and No. 61, General and Local Acts 1957, approved June 21, 1957 (Ms.), does not affect the power of the court to impose additional hard labor for costs under the provisions of Title 15, Section 342, Code of Alabama 1940.

5. A felony is an offense punishable by death or imprisonment in the penitentiary.

6. A misdemeanor is an offense not punishable by death or by imprisonment in the penitentiary.

7. The Board of Corrections, since the enactment of Act No. 61, supra, is not required to accept prisoners convicted and sentenced to hard labor for the county or imprisonment in the county jail, but only those prisoners legally sentenced for felonies, meaning imprisonment in the penitentiary.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

I have three separate requests for opinions from you under dates of June 24, 1957, June 25, 1957, and July 11, 1957. Since you have not numbered your inquiries, I have copied portions of your letters of inquiry and given these inquiries numbers 1 through 11. Your inquiries are as follows:

1. "I have in mind two acts passed by the legislature and approved by the Governor, within the last five days amending Code of Alabama 1940, Title 15, Sec. 325, and Title 45, Sec. 72, called House Bills 74 and 75.

   "If a defendant is sentenced in Franklin County by a court having jurisdiction in misdemeanor cases to imprisonment in the county jail to pay a fine does the court also have legal authority to sentence the defendant to an additional number of days in the county jail to pay the costs, if the defendant has failed to pay or confess judgment for the costs?

2. "If a defendant is sentenced to imprisonment in the county jail as a punishment for his offense in a misdemeanor case by a court having jurisdiction to sentence persons in misdemeanor cases in Franklin County, does such court also have authority to sentence the defendant for an additional number of days in the county jail to pay the costs?

3. "Is Title 15, Sec. 342, Code of Alabama 1940 in effect just like it was before the two acts mentioned above were approved by the Governor in so far as sentencing a defendant to jail in a misdemeanor case for failure to pay or confess judgment for the costs is concerned?

4. "If a defendant is now sentenced to hard labor to pay the fine or costs, when the defendant has failed to pay or confess judgment for the same, where will he serve the hard labor sentence?

5. "Immediately prior to June 1, 1957, did the law provide that a defendant could only be sentenced to jail or hard labor in misdemeanor cases and fail to provide that he may be sentenced to the penitentiary in such cases?"

6. "I have in mind House Bills Number 74 and 75 approved by the Governor a few days ago, Code of Alabama 1940, Title 45, Sections 75, 96 and 97 and also the case of Pounders v. State, 74 So. 2d. 640.
   "Since June 24, 1957, if a defendant is sentenced to eleven months hard labor for the county as a punishment for his offense in a petit larceny case, after being sentenced in a court of competent jurisdiction, and the Board of Revenue or like governing body of the county in which the defendant is sentenced has complied with Title 45,

Sections 96 and 97 of Code of 1940, does the State Department of Corrections have the legal authority to refuse to accept such person sentenced for petit larceny as a prisoner in the state penitentiary during the duration of the sentence?

7. "Does the Department of Corrections of Alabama have the legal authority to refuse to accept all persons sentenced to hard labor for less than twelve months in the state prisons as the place of punishment to serve their sentences, if they are sentenced since June 24, 1957?

8. "Since June 24, 1957, if a person was convicted in a court of competent jurisdiction on a charge of an assault and battery and his punishment is fixed at a fine of $5.00 and costs and also at an additional punishment of six months hard labor for the county, if the defendant pays the fine and costs but is sentenced to six months hard labor for the county as an additional punishment for his offense, does the State Department of Corrections have the legal authority to refuse to accept him as a prisoner in such case, if the county has complied with Sections 96 and 97, Code of Alabama 1940?"

9. "If a person found guilty in a misdemeanor case and fined $5.00 and costs and fails to confess judgment or pay the fine and costs, does the court now have the authority to sentence such defendant to ten days imprisonment in the county jail to pay the fine and to a certain days hard labor at the rate of 75c per day to pay the costs just like he always has had the right to do?

10. "After he serves the jail sentence to pay the fine does the State Department of Corrections have the right to refuse to admit him to state prison to work out the hard labor for the costs?

11. "Is it legal for the said person to serve the hard labor sentence in the county jail to pay the costs?"

The two acts passed by the Legislature to which you refer in your inquiry are obviously Act No. 60 and Act No. 61. General Acts 1957, both approved June 21, 1957 (Ms.). Act No. 60 amends Title 45, Section 72, Code of Alabama 1940, and Act No. 61 amends Title 15, Section 325, Code of Alabama 1940.

Act No. 60, supra, merely authorizes the Board of Corrections to pay costs even though the prisoner is not delivered to the State penitentiary, but said Board of Corrections may now pay costs when the presiding judge certifies to the Board of Corrections that the prisoner has been committed to the county jail.

Act No. 61, supra, amending Title 15, Section 325, Code of Alabama

1940, changes said Section 325 in that the provision is now included that "no misdemeanor prisoner may be sentenced to the penitentiary."

Act No. 61, supra, also provides that Title 45, Sections 96, 97 and 99, Code of Alabama 1940, and all other laws and parts of laws in conflict with Act No. 61, supra, are repealed. These Code sections which were repealed were the ones which autorized county governing bodies to deliver to the Convict Department (Board of Corrections) county convicts sentenced to hard labor and requiring the Convict Department to receive said county convicts and pay certain costs (Title 45, Section 96, Code of Alabama 1940, as amended by Act No. 307, General and Local Acts 1955, page 705). Act No. 61, supra, further provides that such act shall not be construed to relieve the Board of Corrections of the responsibility to pay costs under Title 45, Section 72, Code of Alabama 1940.

In summary, therefore, the two acts have the effect of providing that no misdemeanor prisoner may be sent to the penitentiary, but must serve his sentence in the county and that the county governing body is not now authorized to send its hard labor convicts to the penitentiary, but must retain said convicts in the county, and the Board of Corrections pays the costs as previously required by law.

In answer to your inquiry numbered 1, you are advised that there is no such thing as the sentencing of a defendant to the county jail to pay costs. **Pounders v. State,** 37 Ala. App. 316, 67 So. 2d 282; **Pounders v. State,** 37 Ala. App. 687, 74 So. 2d 640; Title 15, Section 342, Code of Alabama 1940; Biennial Report of Attorney General, 1936-1938, page 781. In the case described in your inquiry numbered 1, the court could sentence the defendant to hard labor for the county for failure to pay costs or confess judgment therefor. **Pounders v. State**, supra.

In answer to your inquiry numbered 2, it is my opinion that the court could not sentence a defendant to any number of days imprisonment in the county jail to pay costs, as stated in my answer to your inquiry numbered 1. Furthermore, in the case described in your inquiry numbered 2, since the defendant was given a sentence of imprisonment in the county jail only, as punishment for his offense as distinguished from hard labor and not having been fined, no additional days at hard labor to pay the costs could be imposed. **Ex parte Hill,** 122 Ala. 114, 26 So. 230, **Hollis v. State,** 123 Ala. 74, 26 So. 231.

In answer to your inquiry numbered 3, it is my view that Title 15, Section 342, Code of Alabama 1940, is still in effect after the passage and approval of Acts No. 60 and No. 61, supra. Although the Convict Department or Board of Corrections must pay costs, the statute authorizing additional hard labor in lieu of the payment of costs was not repealed and in proper cases a defendant must be sentenced to hard labor to pay costs the same as before the enactment of Acts No. 60 and No. 61, supra.

In answer to your inquiry numbered 4, it is my opinion that such prisoner will serve his hard labor sentence in the county for the reason that if the offense is punishable by fine and that fine and costs are not paid or confessed, the court is authorized, under the provisions of Title 15, Section 341, Code of Alabama 1940, to convert the fine to a number of days specified in said section 341, either at hard labor or imprisonment in the county jail. Since such offense is not punishable by imprisonment in the penitentiary, it must be a misdemeanor, and according to the provisions of Title 15, Section 325, Code of Alabama 1940, as amended by Act No. 61, supra, no misdemeanor prisoner may be sentenced or sent to the penitentiary.

In answer to your inquiry numbered 5, you are advised that a felony is defined as an offense which may be punishable by death or imprisonment in the penitentiary (Title 1, Section 7, Code of Alabama 1940; **Bragan v. State**, 243 Ala. 102, 9 So. 2d 123), and all other offenses (not punishable by death or imprisonment in the penitentiary) are misdemeanors (**Walters v. State**, 19 Ala. App. 92, 95 So. 207).

Immediately prior to June 21, 1957, the effective date of Acts No. 60 and No. 61, supra, in my opinion the law failed to provide that a misdemeanor prisoner could be sentenced to the penitentiary. By the very definition of a misdemeanor, such prisoners could not be sentenced to the penitentiary. I believe that you have in mind the fact that under the various resolutions passed by the county governing bodies under the provisions of Title 45, Sections 96 and 97, Code of Alabama 1940, those misdemeanor prisoners sentenced to hard labor for the county were under the provisions of the agreement transferred to the State penitentiary. Those prisoners were never sentenced to the penitentiary but to hard labor for the county.

In answer to your inquiry numbered 6, it is my view that Act No. 61 supra, amending Title 15, Section 325, Code of Alabama 1940, and particularly that provision in said act which states "provided, however, no misdemeanor prisoner may be sentenced to the penitentiary," means that no misdemeanor prisoner may be sent to the penitentiary to serve his sentence, but must be kept in the custody of the sheriff of the county to serve his sentence at hard labor for the county. Furthermore, Act No. 61, supra, expressly repeals Title 45, Sections 96, 97 and 99, Code of Alabama 1940, and thereby removes the authority of the county governing body to pass a resolution transferring the custody of its convicts to the State Board of Corrections. It is, therefore, my view that the State Board of Corrections has authority to refuse to accept such persons as a prisoner in the State penitentiary on and after June 21, 1957 (not June 24, 1957, as stated in your inquiry).

In answer to your inquiry numbered 7, it is my view that the State Board of Corrections has authority to refuse to accept all misdemeanor prisoners, meaning those persons who have been convicted of misdemeanors, whatever the term may be, because of the proviso above referred to in Act No. 61, supra, stating that no misdemeanor prisoner may be sentenced to the peni-

tentiary. The code section or statute defining the crime or providing for its punishment necessarily provides what the punishment may consist of. If the punishment provided for is other than imprisonment in the penitentiary or death, such crime is a misdemeanor, and the term must be served at hard labor for the county or imprisonment in the county jail.

The offense referred to in your inquiry numbered 8 is a misdemeanor sinceit is not punishable by imprisonment in the penitentiary. Title 14, Section 33, Code of Alabama 1940. Therefore, since Title 15, Section 325, supra, has been amended by Act No. 61, supra, to the effect that no misdemeanor prisoner may be sentenced to the penitentiary, it is my view that the Board of Corrections has legal authority to refuse to accept such a prisoner, as is described in your inquiry numbered 8.

In answer to your inquiry numbered 9, it is my opinion that if a person is found guilty of a misdemeanor and fined five dollars and costs and fails to confess judgment or pay the fine and costs, the court does have the authority to sentence such defendant to ten days' imprisonment in the county jail (or in the court's discretion to ten days' hard labor for the county) to pay the fine. Furthermore, such court in either event, since a fine was assessed in the first instance, may sentence the defendant to hard labor to pay costs under the provisions of Title 15, Section 342, Code of Alabama 1940. See Title 15, Section 341, Code of Alabama 1940, and **Pounders v. State**, supra.

In answer to your inquiry numbered 10, you are advised that the prisoner referred to in your inquiry numbered 9 has been found guilty of a misdemeanor and, therefore, could not be accepted by the Board of Corrections in any event. He works out his hard labor for costs in the county.

In answer to your inquiry numbered 11, the said prisoner referred to in your inquiries numbered 9 and 10 must work out his hard labor sentence in the county, meaning that he is not merely imprisoned in the county jail, but would be assigned by the sheriff, under the direction of the county governing body, to work involving hard labor in the county and not in the penitentiary. Title 45, Section 75, Code of Alabama 1940.

Yours very truly,

JOHN PATTERSON
Attorney General

October 21, 1957

Hon. John Watkins
Legal Counsel
Alabama League of Municipalities
24 South Hull Street
Montgomery, Alabama

Counties—Gasoline—Gasoline Fund—Municipalities—Road and Bridge Fund—Roads and Bridges—Words and Phrases.

1. A county may not appropriate any part of its share of the gasoline tax levied by Title 51, Section 647, Code of Alabama 1940, as amended by Act No. 44, General and Local Acts 1955, page 73, to a municipality to be used for traffic control and street maintenance within the corporate limits of such municipality.

2. "Road" as used in Title 51, Section 657, Code of Alabama 1940, as amended by Act No. 44, General and Local Acts 1955, page 73, does not include a street within the corporate limits of a municipality.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, bearing date of September 23, 1957, is as follows:

"Re: Your opinion of June 10, 1957 to John F. Watkins, Legal Counsel, Alabama League of Municipalities.

"We respectfully request your reconsideration of the captioned opinion: it appears that this opinion relies upon a former opinion, Vol. XXII page 193, which was overruled by an opinion cited Quarterly Reports Volume 54, page 195; also, it appears that the captioned opinion relies upon former opinion cited Volume 62, page 45, which said opinion does not necessarily uphold the ruling of the opinion in question.

"We submit this request reluctantly, for we appreciate the fine service which you and your office have rendered and are affording our municipalities; however, this opinion has caused doubt in the minds of our county and municipal officials with relation to joint efforts on their part toward construction, maintenance, supervision, and policing of any public roads within the corporate limits of our municipalities. Time and again our courts have ruled that our county governing bodies have plenary power (legislative, judicial and executive) with relation to the construction, maintenance and supervision of public roads within the

several counties; also, see Title 23, Section 43 of the Code of Alabama, 1940, which is a codification of this opinion. Also, it appears that the term 'public roads' is not necessarily confined to roads outside of the corporate limits of our municipalities. It further appears that Title 51, Section 657 would authorize our county governing bodies to expend gasoline tax monies for the construction, maintenance, supervision and policing of the public roads and bridges in the respective counties.

"I am taking the liberty of enclosing with this request a copy of our study of former opinions, court cases and sections of the Code compiled on this subject for Mayor Chris Heinz, of Selma, Alabama. If your office could give us an opinion reconciling the present law on this question a great service will be done toward strengthening municipal-County relations, a very desirable goal."

The opinion of this office rendered to you under date of June 10, 1957, to which your request refers, is reported in Quarterly Report of Attorney General, Vol. 87, page 15.

Counties have no inherent power. Their authority is derived from the Legislature. See Quarterly Report of Attorney General, Vol. 87, page 15, supra.

The gasoline tax here under consideration is levied by Title 51, Section 647, Code of Alabama 1940, as amended by Act No. 44, General and Local Acts 1955, page 73. Said section, as amended, limits the use of the proceeds of such gasoline tax to the "construction, improvement, maintenance, and supervision of **highways, bridges,** and **streets.**" (Emphasis supplied.)

Title 51, Section 657, Code of Alabama 1940, as amended by Act No 44, supra, provides that the proceeds of said gasoline tax, distributed to the counties in this state, "shall be used exclusively for the construction, maintenance, supervision and policing of the **public roads** and **bridges** in the respective counties." (Emphasis supplied.)

It will be noted that the levy authorizes said revenues to be used for public highways, bridges and streets whereas it is also noted that the distribution to counties is limited to expenditures exclusively for public roads and bridges and not streets.

The Constitution of Alabama 1901, Section 215, limits the use of the proceeds of certain ad volorem taxes, which the counties of this State are authorized to levy, to "the erection of necessary public buildings, **bridges,** or **roads.**" (Emphasis supplied.)

Our Supreme Court has held on numerous occasions that the word "roads" found in Section 215, supra, means "county roads" and does not include "municipal streets." **City of Montgomery v. Montgomery County,**

185 Ala. 281, 64 So. 588, and cases there cited. Cf. **Best v. City of Birmingham**, 16 Ala. App. 631, 80 So. 695; **City of Mobile v. Harker**, 204 Ala. 26, 85 So. 425; **Board of Revenue v. State**, 172 Ala. 138, 54 So. 757; **Clanton v. Chilton County**, 205 Ala. 103, 87 So. 345. See also **McCain v. State**, 62 Ala. 138.

Both Section 215, supra, and Act No. 44, supra, limit the use of certain taxes for road and other purposes. The above-mentioned meaning of the word "road" was made by the Supreme Court long before Act No. 44, supra, was enacted. Therefore, the word "road" as contained in Act No. 44, supra, must be defined in accordance with the meaning placed upon it by the Supreme Court. For this reason, I am of the opinion that the word "road" as used in Act No. 44, supra, does not include a street within a municipality.

Premises considered, I am of the opinion that a county may not appropriate any part of its share of the gasoline tax, here considered, to a municipality to be used for traffic control and street maintenance within the corporate limits of such municipality.

In addition to dividing a portion of the gasoline tax among the counties of this state, Section 657, as amended, supra, also appropriates a part of such tax to municipalities to be used for the construction, improvement and maintenance of highways or streets. This fact evidences a legislative intent that only that part of said gasoline tax appropriated to municipalities by Section 657, as amended, supra, be used by such municipalities; and strengthens the opinion expressed hereinabove.

For these reasons, I am of the opinion that Quarterly Report of Attorney General, Vol. 87, page 15, is sound and should be followed.

Yours very truly,

JOHN PATTERSON
Attorney General

October 21, 1957

Hon. W. W. Lazenby
Tax Assessor of Lee County
Opelika, Alabama

Ad Valorem Taxes—Exemptions—Taxation.

1. Property owned by Opelika Country Club and leased, month to month, to a duly organized Post of The American Legion, is not exempt from ad valorem taxes under provisions contained in Title 51, Section 2, subsection (c), Code of Alabama 1940, as

amended by Act No. 953, General and Local Acts 1951, page 1626.

2. Real estate rented to a Post of The American Legion is not used exclusively for religious worship, for schools, or for purposes purely charitable and, therefore, not exempt from ad valorem taxes under provisions of Section 91, Constitution of Alabama 1901, or Title 51, Section 2, subsection (a), Code of Alabama 1940, as amended by Act No. 953, General and Local Acts 1951, page 1626.

3. Opinion found in Quarterly Report of Attorney Geenral, Vol. 41, page 14, overruled in part.

Opinion by Assistant Attorney General Grant.

Dear Sir:

Your request for an official opinion, bearing date of February 22, 1957, is as follows:

"Re: John H. Powell Post No. 18
American Legion, Opelika, Alabama

"The above post owns a leasehold interest in the Clubhouse and curtilage of the Old Opelika Country Club, a corporation, consisting of a frame building (Clubhouse) and approximately 62 acres of land; said Corporation is in the process of being dissolved.

"Title 51, Section 2, provides that all property owned by the American Legion, or any post thereof, shall be exempt from ad valorem taxation, provided that such property is used and occupied exclusively by said organization.

"The above Post feels that its leasehold interest is not subject to tax. The Post holds the property under a lease, one of the terms of which provides that the Post will pay insurance and taxes which accrue on the property. The above Post insist that the property is exempt from taxation as long as it is held under lease by The American Legion. Naturally if the Country Club Corporation is compelled to pay the ad valorem taxes, the taxes will be passed on to the Post.

"I do not know the contents of the lease, but I have been informed that the Post is charged with the responsibility of taking care of all charges that may come against the Country Club property.

"Will you please give us a ruling on the right of the above Post to exemption from ad valorem taxes on its property."

We wrote you for a photostatic copy of the lease agreement, which you subsequently furnished. An examination of the lease reveals that the Opelika Country Club, a corporation created and existing under the laws of this State, has leased its clubhouse and certain lands to The American Legion, John H. Powell Post No. 18, an unincorporated association of Opelika, Alabama, for its occupation and use as a clubhouse and golf course and not otherwise, for and during the term of one month, to-wit, from the 1st of September, 1955, until the 30th day of September, 1955, and from month to month thereafter.

Pertinent parts of the lease include provisions wherein The American Legion Post, as lessee, agrees to pay all taxes, assessments, operating and maintenance costs, cost of improvements made, charges for utilities, insurance premiums with loss clause payable to Opelika Country Club; and it is further agreed by terms of the lease that the said lessee will pay the sum of one dollar ($1.00) per month to the said lessor. It is also provided in the lease agreement that either the lessor or lessee may terminate the lease contract by giving thirty (30) days' notice in writing. Since the American Legion Post, as lessee, has agreed to pay all taxes and assessments accruing, you have requested an opinion as to whether the Post is or is not entitled to exemption from ad valorem taxes on the property; or, is the property, by virtue of its use, exempt from ad valorem taxes.

Title 51, Section 2, Subsection (c), Code of Alabama 1940, as amended by Act No. 953, General and Local Acts 1951, page 1626, contains provisions for exemption of property owned by the American Legion. This is quoted as follows:

> "(c) All property owned by the American Legion or by Veterans of Foreign Wars, or any part thereof; provided that such property is used and occupied exclusively by said organization." (Emphasis supplied.)

It is a well established rule in this jurisdiction that exemption statutes are to be strictly construed against the taxpayer and in favor of the state. **State v. Joe H. Brady & Associates**, 264 Ala. 397, 87 So. 2d 852; **State v. Dawson**, 264 Ala. 647, 89 So. 2d 103; **State v. Bridges**, 246 Ala. 486, 21 So. 2d 316. Provisions of subsection (c), supra, require that the American Legion Post must own the property and must use it exclusively for the benefit of the organization in order to justify an exemption from ad valorem taxes. I am of the opinion that a mere leasehold interest as the one under consideration is insufficient to constitute "ownership," as contemplated by provisions of the statute.

Section 91, Constitution of Alabama 1901, and Title 51, Section 2, subsection (a), Code of Alabama 1940, as amended by Act No. 953, General and Local Acts 1951, page 1626, provide for exemption from ad valorem taxes for certain lands, and buildings thereon, when same are used exclusively for religious worship, for schools, or for purposes purely charitable. The question arises here as to whether the John H. Powell Post of the American

Legion can qualify as an organization created and existing exclusively for one of the purposes here enumerated.

In construing Section 91, supra, our courts have clearly laid down the rule that the use of property, and not its ownership, establishes the foundation for exemption from ad valorem taxation. Section 91, supra; **State v. Bridges,** 21 So. 2d 316; **Anniston City Land Co. v. State,** 160 Ala. 253, 48 So. 659.

In **Anniston City Land Co. v. State,** supra, our court quoted approvingly from **Washburn College v. Shawnee County,** 8 Kan. 344, involving a constitutional provision which is similar to our own. If we apply the same principle here as was there applied, in bringing this property within the provisions of Section 91, supra, it would require: First, that the property is used; second, that it is used for purposes purely charitable; and third, that it is used for no other purpose.

Although I am unable to find a decision of our appellate court on the question of whether a Post of The American Legion is engaged exclusively in purposes purely charitable and its property therefore exempt from ad valorem taxes for this reason, the question has been considered and decided by the Supreme Court of Ohio. In the case of **Application of American Legion, Department of Ohio, Inc.,** 151 Ohio St. 404, 86 N. E. 2d 467, the court, in arriving at a determination of the question held that the premises were used for a dual purpose and not exclusively for purposes purely charitable, and affirmed the trial court's decision which denied the exemption sought.

While it is undoubtedly true that this Post of the American Legion, as well as all Legion Posts, does a considerable amount of work that can be appropriately classified as being for purposes purely charitable, for which they deserve both praise and commendation, I am of the opinion that, to come within the meaning of the Constitution or statutes in qualifying for the exemption sought, the Post must be engaged in the use of the premises exclusively for religious worship, for schools or for purposes purely charitable. From the information at hand I do not believe this Post can meet such requirements.

I am, therefore, of the opinion that the real estate leased by the Opelika Country Club to The American Legion, John H. Powell Post No. 18, and used as a clubhouse and golf course and not otherwise, is not exempt from ad valorem taxation; and that the parts or portions of an opinion rendered by this office on October 29, 1945, addressed to Hon. Roy Johnson, Tax Assessor of Jefferson County, Birmingham, Alabama, published in Quarterly Report of Attorney General, Vol. 41, page 14, in confilct herewith are expressly overruled.

Very truly yours,

JOHN PATTERSON
Attorney General

November 7, 1957

Hon. Ralph P. Eagerton
Chief Examiner
State Department of Examiners
of Public Accounts

CAPITOL

Taxation—Ad Valorem Tax—Documentary Stamp Tax.

Provisions of Act No. 261, General Acts 1957, discussed generally.

Opinion by Assistant Attorneys General Livingston and Hardin.

Dear Sir:

Your request for an official opinion, bearing date of October 28, 1957, is as follows:

"Act No. 261, General Acts 1957, approved August 13, 1957, relates to the exemption from ad valorem taxation of all non-producing interests upon oil, gas, and other minerals and also to a documentary tax upon leases and other instruments creating and transferring severed interests in non-producing oil, gas, and other minerals. In administering the provisions of this act, numerous problems have presented themselves upon which an official opinion of your office is deemed advisable. As these problems are not necessarily related, the following inquiries are numbered separately and it will be appreciated if you will furnish your opinion as to each of such questions:

"1. Act No. 261, supra, became effective sixty (60) days after its passage and approval by the Governor. What is the effective date of the act?

"2. A executes an oil and gas lease to B in December of 1957 and immediately B assigns the entire lease to C. Should stamps be placed both upon the lease and the assignment? Should stamps be placed on each succeeding assignment thereafter?

"3. A, the landowner, executes a 10-year oil and gas lease in 1955 to B on 160 acres of land. In 1956 B assigns the lease to C. In July of 1957 C assigns the lease to D.

"(a) Should the application for exemption as an existing interest set out the recording data on all successive assignments or is the reference to the original lease and the last assignment sufficient?

"(b) Should the tax, or sum payable, be eight dollars ($8.00) or twenty-four dollars ($24.00), representing eight dollars for each transfer?

"4. Is is necessary for the application for exemption of an existing interest to be signed or will a printed or stamped signature be sufficient?

"5. Where the legal description of the property leased is by metes and bounds may the description in the application be briefed, for example, '140 acres located in the SE ¼ Sec. 3-7N-8E as more particularly described in said lease,' with a proper reference to the place of record of such lease?

"6. A, the landowner, executed in 1956 a lease to B and C. Is it necessary for both B and C to file applications for exemption or may B file the application and pay the tax on the full leasehold interest?

"7. The owner of a section of land executed in 1956 separate leases to A, B, C and D. A obtained the SE ¼, B the SW ¼, C the NW ¼, and D the NE ¼. A, B, C and D executed cross assignments so that each has a one-quarter interest in the four leases comprising the section of land. By contract B is authorized to return the entire leasehold for ad valorem taxes. Can B file one application for exemption covering the entire interest in the section?

"8. Are mineral documentary stamps, required where there is an exchange of property on or after the effective date of Act No. 261, supra, represented by mutual mineral deeds, and no monetary consideration is passed?

"9. Where instruments are executed, reciting on their face that they are correction instruments, ratification of existing instruments, or colessor's agreements, do any of such instruments require mineral documentary stamps when such instruments are executed on or after the effective date of Act No. 261, supra?

"10. Where an oil and gas lease has been heretofore executed and an assignment is made of one-half interest in such oil and gas lease, are the mineral documentary stamps due as to such assignment calculated upon the mineral acreage determined by multiplying the aggregate number of acres by one-half?
"11. The lien for ad valorem taxes for the tax year commencing October 1, 1957 and ending September 30, 1958 attached on October 1, 1957. Do the provisions of the act exempt the interest created or assigned after the effective date of the act from ad valorem taxes for the tax year commencing October 1, 1957?

"Do the provisions of the act authorize application for exemption from

ad valorem taxes for the tax year commencing October 1, 1957 for interest created prior to the effective date of the act?

"12. Section 7 of the act provides for the application for an exemption upon existing leasehold interest by the filing of an application with the judge of probate. Item 8 of such application requires information as to the number of mineral, royalty or lease acres on which such an exemption is sought. If an oil company has a lease covering 40 acres which provides for the payment of a one-eighth (⅛) royalty, should the oil company, in filing an application for ad valorem tax exemption, purchase mineral documentary tax stamps on 35 acres (7/8 of 40 acres) or on 40 acres?

"13. Is the provision in Section 6 of the act providing for application for exemption from ad valorem taxes as to prior existing interests mandatory or permissive?

"14. Where a lease is made for a specified number of years contingent upon the payment of an annual fee or rental, is the tax to be computed on the entire term of said lease irrespective as to whether or not the option of the renewal is exercised for each of the years covered by said lease?

"15. A lease is given for a term of one year upon the payment of a stipulated amount. At the close of said year by mutual agreement the lease is extended for another period of years (say five years). Is the extension of the lease subject to the tax?

"16. The second paragraph of Section 7 contains the following requirement:

" '***The judge shall make a notation on the face of the record of the instrument described in the application showing the date of payment, amount of stamps purchased and affixed to the application and the serial number of the application***'

"Is it your interpretation that this section requires the judge to make such notations on the records of existing instruments recorded in his office when application for ad valorem tax exemption covering same is received?

"17. Do the provisions of Act No. 261, supra, have application to instruments relating to rights or interests in coal or iron?

"18. May the documentary stamps secured from the Department of Revenue in 1953 for use in connection with Act No. 534 of the 1953 Acts (later declared unconstitutional by the Supreme Court) be used now in connection with Act No. 261, supra?"

In compliance with your request I have given consideration to the provisions of Act No. 261, Acts of 1957, approved August 13, 1957, pertaining to the levy and collection of a mineral documentary or transfer tax upon leases and other instruments creating and transferring severed interests in non-producing oil, gas or other minerals, as defined in such act. My answers to your several inquiries bear the same numerical sequence as do your questions.

1. Section 12 of said act provides as follows:

"That this Act shall take effect and be in force 60 days after the date of its passage and approval by the Governor, or upon its otherwise becoming a law."

The act was approved on August 13, 1957. I construe Section 12 as meaning that the act shall take effect and be in force on the sixtieth day after August 13, 1957, which is October 12, 1957.

2. With reference to your second inquiry I advise that, in my opinion, documentary tax stamps should be purchased and affixed to the original insrument creating the leasehold interest and each and every instrument subsequently executed whereby such interest, or a portion thereof, is conveyed or assigned, if and when such instruments are presented for filing and recording. The provisions of Section 2 of Act No. 261, supra, whereby such documentary or transfer tax is levied, clearly apply, among other things, to a leasehold interest or any instrument whereby such interest is assigned. These stamps should be purchased from the judge of probate and affixed to such instrument upon the filing and recording of any or all of the instruments mentioned in your first inquiry.

3. The provisions of Section 7 of Act No. 261, supra, prescribe the nature, form and content of the application to be filed by the present owner in order to secure exemption from ad valorem taxation on any interest described in such act existing prior to the effective date thereof. It appears from a reading of Section 7, and study of the required information to be contained in the application there described, that it is necessary that such application contain the recording data pertinent to each and every instrument affecting the interest upon which exemption is sought since the commencement of the separate ownership. I, therefore, advise, with reference to your third inquiry, that the reference to the original lease and the last assighnment thereof would not be sufficient.

Regarding the amount of documentary tax due on the instrument described in your third inquiry, reference is made to the second paragraph of Section 6 of said act providing that application for exemption upon existing interests shall be made by the then owner upon the interest then owned by him, and further providing that as a condition precedent to obtaining such exemption such applicant must pay a sum equivalent to the

tax levied by Section 2, et. seq., of the act upon interests created subsequent to the effective date of the act. Applying the rate prescribed in Section 3(a) of said act to the lease described in your third inquiry, I conclude that the amount of tax due would be eight dollars ($8.00) rather than twenty-four dollars ($24.00) as this is the full amount due upon the interest currently owned by the applicant.

4. Your fourth inquiry pertains to the necessity of signature upon applications filed for exemption upon previously existing interests. In this regard I advise that Section 7 of said act, prescribing the contents of such application, makes no requirement as to a written signature being affixed thereto. The form prescribed by your department for use in making such application does contain an appropriate space for signature; however, I know of no prohibition against this being a printed, stamped or facsimile signature as such would seem to satisfy the requirements of the act.

5. In answer to your fifth inquiry, I call your attention to Item 3 of Section 7 of said act which requires a "Complete description of land affected (including aggregate acreage)" to be included in the application for ad valorem tax exemption. In my judgment, this provision requires a full description of the land affected as described in the lease and a brief description with reference to the place of record of the lease would not be sufficient.

6. Referring to your sixth inquiry, it is my opinion that where a leasehold interest is owned jointly by two lessees, an application for exemption from ad valorem taxes must be filed by each lessee in view of the provisions of the second paragraph of Section 6 of said act, which provides, among other things, as follows:

> " . . . provided that as a condition precedent to obtaining such exemption upon existing interests the then owner or owners thereof shall make application for exemption of the interest then owned by him or them . . ." (Emphasis supplied.)

7. Under the facts as stated in your seventh inquiry, you are advised that B would not be authorized to file one application for exemption for all parties interested and pay a tax covering the entire interest in the section of land. However, if a valid agency contract is entered into between the parties making B the agent of A, C and D and by such contract B is given specific authority to file a separate application for A, C and D and pay the documentary tax for each individual, I see no objection to such an arrangement. In any event, for the reasons stated in answer to your sixth question, there must be a separate application filed by each owner of a leasehold interest, either by himself personally or by a duly authorized agent.

8. Upon consideration of this eighth question, I am of the opinion that an exchange of property or mineral interest by mutual mineral deeds on or after the effective date of said act, even without monetary considera-

tion being passed, is a transfer of an interest within the meaning of the provisions of Section 2 of the act, and would, therefore, require the payment of a documentary tax on both instruments when presented to the judge of probate for filing and recording.

9. The proper answer to your ninth question depends upon numerous contingencies undisclosed by your inquiry, specifically the nature and effect of the instruments considered. Under Section 2 of said act, the documentary tax is levied upon the filing and recording of every lease and other writing where there is created a leasehold interest or whereby any such interest is assigned or extended beyond the primary term fixed by the original instrument and upon every deed, instrument, transfer, evidence of sale or other writing whereby there is afterwards conveyed to a grantee or purchaser, or excepted or reserved to a grantor separate and apart from the surface, any interest in or right to receive royalty from any nonproducing oil, gas, or other minerals. If the correction or ratfiication instruments referred to do not create, transfer, convey, extend or reserve any interest but are merely instruments correcting or ratifying prior instruments which did or attempted to create, transfer, convey, extend or reserve an interest and on which prior instruments the documentary tax had been paid, there would be, in my opinion, no documentary tax due on the filing and recording of such correction or ratification instruments. Similarly, if the co-lessor's agreements do not create, transfer, convey, extend or reserve an interest, there would be no documentary tax on the filing and recording of such agreements.

10. Under Section 1 of said act is found the following definitions of the terms "mineral acre" and "royalty acre":

> "The terms 'mineral acre' and 'royalty acre' are each defined as the number of acres obtained by multiplying the aggregate acreage described in the instrument involved by the fractional interest leased or conveyed hereby (sic)."

Section 3 of said act describes the formula for the computation of the documentary tax due per mineral or royalty acre conveyed, leased, assigned, excepted, reserved or transferred. You are, therefore, advised that where an oil and gas lease conveying an interest in one hundred (100) acres is executed and afterwards one-half of this interest is assigned, the documentary tax as to this assignment is calculated upon the mineral or royalty acreage determined by multiplying one hundred, the aggregate number of acres, by one-half, the fractional interest conveyed or assigned. The mineral or royalty acres for the purpose of computation of the documentary tax in such a situation would, therefore, be fifty.

11. In answer to the first question in your eleventh inquiry, you are advised that a tax lien for the tax year October 1, 1957 through September 30, 1958 did not attach to interests created, assigned, or transferred after October 12, 1957, the effective date of Act No. 261, supra, since such new

interests did not exist on October 1, 1957, the law day for ad valorem tax and, therefore, no ad valorem tax for said tax year will be due on interests created, assigned, or transferred after October 12, 1957. The same would apply to interests created, assigned, or transferred during the period October 2, 1957 through October 12, 1957, inclusive. A lien did attach to such interests, but in another form, on October 1, 1957 either as a severed existing interest to be assessed by the owner thereof on October 1, 1957 or as a non-severed interest to be assessed along with the surface of the land by the owner thereof on October 1, 1957.

It, therefore, appears that interests created, assigned, or transferred after October 1, 1957 are not subject to ad valorem tax for the tax year October 1, 1957 through September 30, 1958 by virtue of the general law governing ad valorem taxation rather than the exemption provided for in Act No. 261, supra.

Your second question in inquiry No. 11 is answered by the second paragraph of Section 6 of said act which provides, in part, as follows:

> " . . . As to any existing interests, if any such sum is paid after October 1, 1957, then such exemption shall apply only to taxes becoming a lien after such sum is thus paid. . . ."

It is to be noted that since the effective date of said act is October 12, 1957, no documentary tax can be paid until "after October 1, 1957." It, therefore, appears that in all cases the ad valorem exemption of prior interests can apply only to taxes becoming a lien on and after October 1, 1958. You are, therefore, advised that the provisions of said act do not authorize the application for exemption of interests created prior to October 12, 1957, from ad valorem taxes for the tax year commencing October 1, 1957. The provisions of the act do authorize the application for exemption of interests created prior to October 12, 1957 from ad valorem taxes for the tax year commencing October 1, 1958 and for each tax year commencing thereafter. It should also be noted that the exemption does not apply to taxes due for the tax year October 1, 1956 through September 30, 1957, which taxes became payable on and after October 1, 1957, and this tax must be paid.

12. In answer to your twelfth inquiry, I advise that an oil and gas lease on forty acres of land would require the payment of the tax on the basis of forty acres as the instrument conveys a leasehold interest in each acre and not in seven-eights of forty acres.

13. Your thirteenth inquiry obviously relates to those interests described in such act existing prior to the effective date thereof, for such are the only type of interests for which it is necessary that application be made in order to obtain exemption from ad valorem taxation. The manner of obtaining such exemption for those interests existing prior to the effective date of the act is set out in the second paragraph of Section 6 thereof.

An inspection of this particular portion of Section 6, supra, reveals that, after making provision for such exemption that act provides, as a condition precedent to obtaining exemption, that it is necessary that the owner thereof shall make application for exemption on the interest then owned by him and shall pay, by the purchase of documentary tax stamps, a sum equivalent to that which would be due were such instrument one creating such interest subsequent to the effective date of the act.

The question of whether such an application upon previously existing interest be filed is one resting in the discretion of the owner of such interest and should he not desire to make such an application nor comply with the conditions precedent thereto, then such interest held by him shall not be influenced by the provisions of this act but shall continue to be returned for ad valorem taxation as in the past.

14. Regarding your fourteenth inquiry, I am of the opinion that the amount of tax due should be computed based upon the specified number of years set out in such instrument without regard to the attaching contingencies. Under the provisions of Section 3, supra, the ascertainment of the "primary term" of the interest conveyed affects materially the amount of tax due. In Section 1 of the act is found a definition of the phrase "primary term" as used within such act. This legislative definition is:

> "The term 'primary term' when used herein in connection with any instrument affected by this Act shall mean the period of time that the estate created by such instrument shall endure under the terms thereof in the absence of production of oil, gas or other minerals in paying quantities, the carrying on of drilling or reworking operations for the production of such oil, gas or other minerals, force majeure or laws, rules or regulations (Federal or State) preventing such drilling operations."

Under this definition, it is my opinion that in computing the tax due on an instrument such as that described in your inquiry the "primary term" should be considered to be the total number of years covered by such lease agreement, rather than considering same as a lease from year to year.

15. In my opinion the extension of such lease is subject to the tax levied by the act and should be collected when the instrument reflecting same is presented for filing and recordation. This question is answered specifically by the language of Section 2 of the act wherein it is stated that such tax is applicable to each and every lease or any instrument" . . . whereby any such interest is assigned or is extended beyond the primary term fixed by the original instrument . . . "

16. In my opinion your sixteenth inquiry should be answered in the affirmative. It is my opinion that the language of Section 7 of the act, quoted in your request, affirmatively requires that the judges of probate make such notations on the records of existing instruments recorded in

their offices when applications for ad valorem tax exemption covering same are received.

17. In reply to your seventeenth inquiry, I advise that, in my opinion, the definition of the term "oil, gas and other minerals" as found in Section 1 of Act No. 261, supra, does not include within its meaning coal and iron or iron ore. I, therefore, advise that the provisions of the act do not have application to instruments relating to rights or interests in coal and iron.

18. With reference to your eighteenth inquiry, I advise that, in my opinion, the judges of probate who still have in their possession documentary stamps purchased for use under the now repealed Act No. 534 of the Acts of 1953 may use such stamps in compliance with the provisions of Act No. 261, supra, provided an accurate accounting of the stamps remaining on hand from the purchase, or purchases, of same made in 1953 is had with the Department of Examiners of Public Accounts. This will be essential in view of the provisions of Section 9 of Act No. 261, supra, which provides that the judges of probate shall be accountable for all such stamps received by them or the face amount of such stamps disposed of as provided herein or otherwise not in their possession .To render such accounting possible it is necessary that there be an accurate inventory of the stamps in the possession of the various judges of probate as of the effective date of Act No. 261, supra, which represent stamps remaining from purchases made in 1953 and I feel that this inventory should be accomplished by the judges of probate working in conjunction with the Department of Examiners of Public Accounts. These conditions being met, I feel that the judges of probate may use the stamps remaining from the 1953 purchases in carrying out the provisions of Act No. 261, supra.

Very truly yours,

JOHN PATTERSON
Attorney General

December 16, 1957

Hon. Arnold Teks
City Attorney
City of Florence
Lauderdale County
Florence, Alabama

Licenses—Municipalities.

1. A municipal ordinance which levies privilege licenses for 1957 and for subsequent years is valid until repealed or amended.

2. A municipal license ordinance may be amended at any time.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, bearing date of December 4, 1957, is as follows:

"Re: Request for Opinion

"We respectfully request your opinion based on the following facts:

"On December 11, 1956, the Board of Commissioners of Florence duly enacted an ordinance providing for the privilege license scheduled for the calendar year 1957 and subsequent years.

"Our question is, can we continue the same schedule for succeeding years as provided for in our 1956 ordinance without the adoption of separate ordinances for each calendar year?

"It is my opinion that the City can continue to operate for succeeding years under such an ordinance. Title 37, Section 735 of the 1940 Alabama Code provides that the time for which such privilege license shall run will not exceed one year. In City of Montgomery v. Montgomery City Lines, 254 Alabama 652, 49 So. 2d 199, the court stated that, 'the license tax, as we have stated, only extends for a year. Municipalities may change the amount of it from year to year within the limits fixed by law then applicable.' I construe the statute and the interpretation of it made by the court to mean that the amount charged in any license schedule will not exceed one year but that it is not necessary for a municipality to adopt a separate ordinance for each license year.

"In view of the fact that the City must take immediate action in revising its license schedule for 1958 and publishing either amendments to the 1956 ordinance or a completely new ordinance within the next few weeks, I will greatly appreciate it if you will expedite your reply."

Your request states that the ordinance enacted by the City Commission of the City of Florence on December 11, 1956, levied privilege licenses in said city for the calendar years subsequent to 1957 as well as for the year 1957.

Title 37, Section 735, Code of Alabama 1940, reads, in part, as follows: "All municipalities shall have the power to license any exhibition, trade, business, vocation, occupation, or profession not prohibited by the constitution or laws of the state, which may be engaged in or carried on in the city or town; to fix the amount of licenses, the time for which they are to run not exceeding one year, and provide a penalty for doing business without a license. . . . "

Section 735, supra, limits the time for which a municipal privilege li-

cense may run to a period of one year.—City of Montgomery v. Montgomery City Lines, Inc., 254 Ala. 652, 49 So. 2d 199. However, said section does not require that a separate license ordinance be enacted for each year.

Therefore, I am of the opinion that the ordinance of the City of Florence, referred to hereinabove, levies privilege licenses in said city for each calendar year until said ordinance is repealed or amended; and that it is not necessary for your Commission to enact a new license ordinance for each year. Of course, said ordinance may be amended in whole or in part at any time. See **Goldsmith v. City of Huntsville**, 120 Ala. 182, 24 So. 509, **Woco Pep Company of Montgomery v. City of Montgomery**, 213 Ala. 452, 105 So. 214, and **American Bakeries Company v. City of Opelika**, 229 Ala. 388, 157 So. 206.

Yours very truly,

JOHN PATTERSON
Attorney General

December 19, 1957

Hon. Bradley Brown, Director
Department of Revenue
Jefferson County
Birmingham 3, Alabama

Licenses—Taxation—Hotels and Inns.

1. Where an establishment falls within the definition of a hotel as is defined in Title 51, Section 540, Code of Alabama 1940, such establishment is subject to the license tax levied on the operator of hotels although the building was primarily designed to be used as an apartment house, and is partially used as an apartment house.

2. Where an establishment falls within the definition of a hotel as is described in Title 51, Section 540, Code of Alabama 1940, the operator is liable for the hotel license tax, which license is to be measured by all of the rooms in the building comprising the hotel, regardless of the fact that some of said rooms or units are rented as apartments to permanent tenants.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Reference is made to your request of December 3, 1957 made over long distance telephone in which you renewed your request made on February 21, 1957 by letter for an official opinion concerning the hotel license tax under Title 51, Section 540, Code of Alabama 1940.

Your said written request in this respect is as follows:

"Attached is a copy of a letter from Leader, Tenenbaum, Perrine & Swedlaw regarding our demand on the Essex House for license under Section 540 of Title 51 of the Code of 1940.

"To the best of our knowledge and belief the facts as set out in this letter are all true and correct, and based on the information incorporated therein your opinion is requested on the following:

"1. As the Essex House is designed as an apartment building and the apartments therein are all furnished with stoves and refrigerators, would the fact that a large portion of said apartments are occupied by permanent tenants relieve them of the license liability under Section 540 of Title 51 of the Code of 1940.

"2. If your answer to the above question is in the negative would their license liability be based on the total number of bedrooms in the building, or only those which are available for transients."

The letter to which you refer to from Leader, Tenenbaum, Perrine & Swedlaw, a copy of which was attached to your said letter of February 21, 1957, is quoted as follows:

"The State and County has made a demand upon the Essex House for the payment of State and County license for hotel for the years 1956 and 1957, the demand being made to pay said license on the basis of 98 rooms.

"The Essex House had paid a State and County license up to the year 1956 but held in abeyance the payment of the same due to the fact that a case was pending in the United States District Court for the Northern District of Alabama testing the question as to whether or not any rooms in the apartment could be rented to transients. This case is still pending before the Honorable Seybourn H. Lynne.

"The Essex House is an apartment building which was built under the provisions of the National Housing Act, commonly known as Title 6, Paragraph 608. A corporation is the owner of the apartment as provided by said Housing Act and the Government is a stockholder in said corporation. Under the provisions of the Act under which this apartment was constructed the rental schedule for the apartments is fixed by the Federal Housing Administration upon the basis of thirty-day rentals. The method of operation of the apartment is also controlled by the Federal Housing Administration. In some instances the Federal Housing Administration has granted permission to some of the projects constructed with a 608 loan to rent a portion only of the premises to transients for periods less than thirty days, but strictly upon the basis of the rental schedule fixed by the Authority.

"In 1954 the National Housing Act was amended by including therein Section 513 (j) which prohibited the rental of any apartment built under a 608 loan to be operated as a hotel or the rental to transients. The constitutionality of the 1954 Act is now being tested in a number of courts, including the District Court in Birmingham. The question was raised and determined in the case of **Darlington, Inc. v. Federal Housing Administration,** 142 Fed. Supp. 341. This case is now in the process of appeal and until final determination action on other cases throughout the country touching upon this question are normally being held in abeyance.

"We do not feel that the Essex House is required to pay a hotel license under the Alabama State Statute. It was designed principally for residential use and is considered an apartment house. The mere rental of a few of the rooms to transients does not make it a hotel. **Darlington, Inc. v. Federal Housing Administration, supra.**

"In the case of **People v. Goldfogle,** 121 Misc. Reports, 341 201 N. Y. Supp. 262, it was held that a building maintained its original character of an apartment house unaffected by the casual fact that some of the rooms are temporarily devoted to purposes which have some of the elements of hotel accommodations. There approximately 20% of the total number of rooms were being used for this purpose. In regard to the Essex House there is approximately 20% or less of the apartments available to transients. The number of such apartments available vary with the number of permanent lease tenants in the apartment building. The Essex House is prohibited and does not advertise as a hotel, solicit business as a hotel, or in any way hold itself out to be a hotel. It merely accepts guests for less than thirty-day periods when the guests request such accommodations and the same are available.

"During the year 1956 and up to the present date, the number of apartments rented on such basis has varied between 14 and 45. The average number of apartments rented on a daily basis would be approximately 20. The City of Birmingham has recognized this situation and has issued a license for the City of Birmingham for the use of 20 apartments. At no time during the history of the operations of the Essex House have 98 apartments ever been available for rental to transients or in any way that could be connected with hotel operations.

"The apartments in the Essex House are of two types, one-bedroom and efficiency apartments. Each apartment is equipped with a stove, refrigeration, all kitchen facilities; the apartment is rented either furnished or unfurnished. In the event it is rented furnished, the tenant, in addition to the kitchen facilities, is furnished with cooking utensils, dishes, linens, maid service, electricity for heating and cooking and refrigeration. A different schedule of prices is fixed by

the Federal Housing Administration for the rental of unfurnished apartments and furnished apartments.

"Tenants requesting rental of apartments for less than thirty days (commonly known as transients) are not normally furnished dishes and cooking utensils, nor is the stove connected for cooking purposes.

They may have such accommodations when requested.

"Under these circumstances, it could not be considered by any stretch of reasoning that the Essex House is a hotel or operated as such, nor would it be liable for a hotel License on all of its apartments.

"In a sense of fairness, the Essex House would be willing to pay a State and County hotel license on the basis of the limited number of rooms which are available for that purpose in the same manner that it is now paying the City of Birmingham, even though it maintains it is not liable for any hotel license.

"It is further pointed out that we do not know the effect of a ruling which may be issued at any time by the Federal Court in the case affecting the operations of the Essex House.

"At the present time and during the past two years every effort is made by the Essex House to rent the apartments on a permanent basis and, as stated, apartments are rented to transients only when available and for the purpose of supplementing the income in order to meet the mortgage obligations under the 608 loan.

"We respectfully request that you obtain an opinion from the Attorney General:

"1. As to whether or not in view of the decisions above cited the State of Alabama is entitled to any license from the Essex House for the operation from time to time of a portion of its premises to transients.

"2. In the event, under the authorities, it could possibly be considered that by the limited use of a few rooms the character of the building is changed from an apartment house to a hotel, then the number of rooms upon which the Essex House would be required to pay a license.

"3. It is strictly maintained by the Essex House that under no circumstances would it be liable for a license for furnished apartments leased upon a long-term basis with all cooking facilities furnished, or rented unfurnished."

In addition to the information which has been furnished by you concerning the business carried on by the Essex House at Birmingham, Alabama, it is also general knowledge that the Essex House has for more than the last five years rented a very substantial number of its rooms or units to transient guests for a night or for periods of less than a week. The facts in this respect also undisputedly show the number of rooms involved in such category to average twenty or more each day during each of such years. The Essex House also maintains a lobby, has a clerk, a desk, a register, furnishes maid service among other services which are also usually furnished by hotels.

The hotel license tax is levied under the provisions of Title 51, Section 540, Code of Alabama 1940. Your questions in this case then address themselves to the meaning and applicability under the circumstances of said State license tax statute, and whether the Essex House under the facts as revealed would come within the scope of said State statute as a hotel, and as such would be liable for the tax. Section 540, supra, insofar as the levy of the tax is concerned, reads as follows:

> "Each person keeping a public inn or lodging house of five or more bed rooms where transient guests are lodged for pay shall be deemed for the purposes of this title to be engaged in the business of keeping a hotel. A transient guest is one who puts up for less than one week at such hotel, but such a house is no less a hotel because some of the guests put up for longer periods than one week. . . ." (Emphasis supplied.)

The license tax provided for in the statute, where due, is measured as follows:

> ". . . Hotels with five rooms and not over fifteen rooms, fifty cents for each room; hotels with over fifteen and less than fifty rooms, one dollar for each room; hotels with fifty rooms and less than one hundred rooms, one dollar and fifty cents for each room; hotels with one hundred rooms and over, two dollars for each room. If meals, food or refreshments are served to the general public and charged for, then the additional license required to be paid by restaurants, cafes, lunch counters and public eating houses shall be paid. Provided that where cottages or annex are operated in connection with, or rented by such hotel this section shall apply to the total of the rooms in the hotel and the cottages and annex." (Emphasis supplied.)

We are not then concerned in this opinion with the laws relating to federal housing or the cases which construe those federal laws, but we are interested only in arriving under the facts presented at a correct interpretation of the State statute, Section 540, supra.

The general rule regarding the construction of a statute is that where the language of the statute is unambiguous, the clearly expressed intent

must be given effect and there is no room for construction. **Henry v. McCormack Bros. Motor Car Co.**, 232 Ala. 196, 167 So. 256; **State v. Thames, Jackson, Harris Co.**, 259 Ala. 471, 66 So. 2d 733, 735; **State v. Bay Towing and Dredging Co.**, 264 Ala. 187, 85 So. 2d 890, 892.

Section 540, supra, appears in this respect to clearly provide that a public inn or lodging house is a hotel where it contains five or more bed rooms where transient guests are lodged for pay.

In an official opinion of this office published in Biennial Report of the Attorney General, 1936-1938, page 52, the then Attorney General ruled that a public inn or lodging house clearly becomes a hotel under the expressed wording of this statute when it contains "five or more bed rooms where transient guests are lodged for pay." The statute itself also defines a "transient guest" as one who puts up for less than a week at such hotel.

On the question of the measure of the license, such question was also answered in the same opinion as follows:

> "The next question that confronts us is whether the term 'rooms' as used in the graduated scale of the schedule means only the number of rooms in which 'transient guests are lodged for pay' or whether it means the total number of rooms in the hotel. Throughout the graduated scale the term 'rooms' is used without the modifying clause 'where transient guests are lodged for pay.' Had the Legislature intended for the term 'rooms' as used in the graduated scale to mean only 'rooms' 'where transient guests are lodged for pay' it is my opinion that it would have so stated by using the modifying clause, just as it did when it used the term in defining a hotel in the first part of the schedule. **Having failed to use this modifying clause in the graduated scale, it is my opinion that the Legislature did not mean for the scale to be based only on the number of rooms 'where transient guests are lodged for pay' but that it intended for it to be based on the total number of rooms in the hotel. This conclusion is strengthened by the last sentence of the schedule which reads:** (Emphasis supplied.)
>
> " 'Provided that where cottages or annex are operated in connection with, or rented by such hotel the above schedule shall apply to the total of the rooms in the hotel and the cottages and annex."

While this office was construing in that opinion schedule 74 of Act No. 194, General Acts 1935, page 256, this same statute has been brought forward without change as Section 540 of Title 51, Code of Alabama 1940, and the opinion appears to be just as applicable to the situation presented here as it was to the one then under consideration.

Moreover, the more recent cases on the subject involving various statutes in other states clearly appear to recognize as a general principle that

where the operator of a building designed primarily as an apartment building makes a practice of renting for compensation a substantial number of the rooms or units to transient guests for over night or periods of less than a week and also furnishes some of the other services usually furnished by a hotel, that such an establishment is a "hotel." **Woods v. Western Holding Corp.** 77 Fed. Supp. 90, 93, 94; **Morden v. Radford,** 229 Mo. App. 789, 84 S. W. 2d 947; 43 C. J. S., Innkeepers, Section 1; Words and Phrases, (Per. Ed.), Volume 19 (see 1957 Cumulative Pocket Part, pp. 176, 177).

In considering the statute itself as well as the foregoing authorities in the light of the circumstances above outlined, I am of the opinion that the establishment to which you refer is a "hotel," and is subject to the payment of the license tax involved computed on the basis of the total number of rooms contained in the building.

Your first question then is answered in the negative, and your second question to the effect that the license tax is to be measured by "the total of the rooms in the hotel."

Very truly yours,

JOHN PATTERSON
Attorney General

December 26, 1957

Honorable W. H. Bradford, Chairman
Board of Registrars
Lawrence County
Route No. 2
Mt. Hope, Alabama

Boards of Registrars—Registrations—Elections — Voters — Opinions Overruled, Modified or Distinguished.

1. The time provided for purging the registration lists begins on the first Monday in January of each even numbered year and lasts for one week. The Boards of Registrars may also purge their lists at any other time that the board is in session.

2. The Board of Registrars of Lawrence County, Alabama, may register qualified persons to vote on the first Monday in January 1958, as well as purge the registration lists as required by law. Should there be a local act in effect on this question, it would govern.

3. The remainder of the week, beginning with the first Monday in January 1958, would be devoted to the purging of the registration lists.

4. Opinions reported in Biennial Report of Attorney General 1932-1934, page 452, and Quarterly Report of Attorney General, Vol. 17, page 397, are modified.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion bearing date of November 18, 1957, is as follows:

"Since our week for purging of voters begins on the first Monday in January, a day set apart by law to register people who wish to register to vote, I am wondering if it would be O.K. to go ahead and register on that Monday, and then begin our one week purging on the following Tuesday.

"I will certainly be grateful if you can give me information regarding this matter."

The above question presented by you to the Secretary of State was in turn forwarded to this office by said Secretary of State. In her letter to this office, she enclosed your letter to her and a copy of a letter that she had written to you. In her letter to you, she pointed out two code sections and an opinion of this office found in Vol. 17 of the Quarterly Report of the Attorney General, page 397. She further cited you to a recent Act of the State Legislature, which is Act No. 529, General and Local Acts 1957.

After examining the law on the subject of registration of voters by boards of registrars and the subject of purging voting lists by boards of registrars, we found that the law has been changed somewhat since the last opinion issued out of this office on the subject.

Title 17, Section 26, as amended by Act No. 262, General and Local Acts 1943, page 233; Section 27, as amended by Act No. 561, General and Local Acts 1943, page 560; and Act No. 210, General and Local Acts 1943, page 187 provide various times for the boards of registrars over the State to register qualified persons as voters. These particular sections of Title 17 also apply to various counties with varying populations.

Act No. 346, General and Local Acts 1945, page 563, provides for the registration of persons in the armed forces of the United States, the Merchant Marines, the Red Cross, and all other affiliated organizations, stationed or serving outside the county of their residence, and:

" . . . all other persons otherwise qualified under the laws of the State of Alabama to register, . . . "

The time provided by this section for the registration of these persons is listed as the first and third Monday in each month. The place for registration is the county courthouse or courthouses, if there be more than one courthouse in a county.

Title 17, Section 44, Code of Alabama 1940, provides that the boards of registrars shall meet in each county on the first Monday in January of every even numbered year, and continue in session for one week for the purpose of purging the registration lists.

This office has rendered two opinions—one found in Biennial Report of the Attorney General 1932-1934, page 452, and the other found in Vol. 17, Quarterly Report of Attorney General, page 397, both of which state that the period set aside for purging the registration lists in Section 44, supra, is the only time during which registration lists may be purged. These two opinions also hold that the boards of registrars cannot register qualified persons to vote during this week because there was no authority for the registration of qualified persons to vote during the period set aside for purging the registration lists. Please note that these opinions were written in the 1930's, and Section 27(1), supra, was enacted in 1945. Consequently, since the enactment of Section 27(1) in 1945, there is authority for the boards of registrars to meet and register qualified persons to vote on the first Monday in January of each year, therefore, the boards of registrars are authorized to register qualified persons to vote on the first Monday in January of 1958, as well as to purge the registration lists on said day.

Act No. 529, General and Local Acts of Alabama 1957, provides, in pertinent part, as follows:

> "Section 1. The boards of registrars shall meet for the purpose of purging the lists of registered voters and holding hearings thereon at the times prescribed by law. But, in addition thereto, the boards of registrars may purge names from the lists of registered electors at any time the board is in session provided a hearing is held in case the person whose name is proposed to be stricken from the registration lists has become a resident of another county in this State or has been convicted of an offense mentioned in Section 182 of the Constitution, and, provided further, that written notice of the hearing and the date thereof is given by the board to such person by registered or certified mail, return receipt requested at the last known address at least 30 days before any election and a copy of such notice is forwarded to the sheriff of the county for personal service upon such person within at least five days after receipt thereof by him, which service must be returned by said sheriff within 10 days after receipt thereof by him . . ."

This act seems to provide that, in addition to the time prescribed by law for the purging of registration lists, which is the first Monday in January of each even numbered year and to continue in session for one week, the boards of registrars may purge names from the list of registered elec-

tors at any time the board is in session for the purpose of registering qualified persons to vote. Consequently, it appears that now the various boards of registrars may purge their registration lists at any time that they are in session for the purpose of registering qualified persons to vote.

Since the boards of registrars are authorized to meet for the purpose of registering qualified persons to vote on the first Monday in January 1958, then the boards of registrars could register qualified persons to vote and purge the registration lists at the same time on this day. The rest of the week, beginning with the first Monday in January 1958, would be set aside for the purging of the registration lists only.

Let it be clearly understood that the foregoing opinion is based on the general law in Alabama and does not purport to construe any local act on the subject.

The two former opinions of this office, reported in Biennial Report of Attorney General 1932-1934, page 452, and Quarterly Report of Attorney General, Vol. 17, page 397, are modified to conform to the above.

Yours very truly,

JOHN PATTERSON
Attorney General

December 30, 1957

Honorable Horace Norrell
Mayor, Town of Trussville
Jefferson County
Trussville, Alabama

Licenses—Taxes—Municipalities—Taxation.

1. The current ordinance of the city of Trussville levying a license tax on privilege of unloading or making deliveries within its corporate limits, where merchandise or property is transported from a point outside its corporate limits, applies without limitation to "any" person, firm, corporation or motor transportation company which exercises such privilege within the City of Trussville.

2. Said license is levied on the privilege of unloading or making deliveries within the City of Trussville and expressly applies to all persons or concerns who transport merchandise, including groceries, from a point without the City to a point within the City and who unload or deliver it there, regardless of the fact that such persons are transporting their own products or making such deliveries to their own stores or places of business.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion, bearing date of May 28, 1957, is as follows:

"I would appreciate very much if you would give me a ruling on the following problem.

"We have a firm known as the Associated Grocers of Alabama, located in Birmingham, delivering into our Town to a member of this firm under the name of Norrell's Dixie Super Store. Associated Grocers, as you know, is a co-op, and my store here, Norrell's Dixie Super Store, is a member.

"It is our opinion and ruling that this constitutes a delivery from one's self, and Trussville does not make a license charge. We also use the same rule on chain stores, namely, Hill Grocery Company, which also delivers into our city.

"I am very much interested in this, inasmuch as I am interested in the Town of Trussville and also part owner of the Associated Grocers of Alabama. I hope that the ruling will fit the Associated Grocers the same as other chains in the State of Alabama—Winn-Lovett, A & P, and other chains who are not paying licenses to make these deliveries."

In your letter of July 5, 1957, to this office, you also furnished the following additional information:

"Our Ordinance in question reads:

" 'FREIGHT AND PRODUCE DELIVERY—

" 'Any person, firm, corporation or motor transportation company unloading, delivering, distributing or disposing of any goods, wares, merchandise or produce in the City of Trussville, Alabama, which are transported from a point outside the City of Trussville to a point inside the corporate limits of said city, per year . . . . . $50.00.'

"There is a difference of opinion about charging Associated Grocers of Alabama this license and not charging Hill Grocery Company. Both deliver out of Birmingham, and the orders are sent in on an order form.

"We are enclosing a circular received from Associated Grocers. Their trucks have written on them 'Owned by Those We Serve'. If any money is made by this warehouse, it is returned to the merchant owners

in patronage dividends. Each retail store owns one voting share of stock costing $750.00. The retailer also has on deposit an amount equal to twice his weekly average purchase.

"It seems that the local court says that Hill is delivering to itself and owes no license. The Associated Grocers Company is of the opinion that they come under the same ruling, and they have not paid the license."

Further information also received is to the effect that the Associated Grocers of Alabama is a corporation.

1. Your first question then appears to be whether companies like the large chain grocery concerns which deliver merchandise in their own trucks in Trussville to their own stores are liable for said license tax where the trucks involved haul said merchandise from Birmingham or some other point without the City of Trussville.

2. You also inquire as to whether the Associated Grocers of Alabama, a corporation, and an alleged co-operative, in making deliveries to its stockholders and members in Trussville where such transportation originates in Birmingham or some other point outside of Trussville is in reality actually delivering such merchandise to itself or to its own stores so as to come within the same class or category for the purpose of said license as said large chain grocery concerns.

In the outset it might be well to state that a license tax whether levied by a municipal ordinance or by a State statute is a tax levied for the privilege of doing a certain thing in the jurisdiction involved and is often referred to as a privilege tax. It is well to recognize that such a tax can be validly levied on the privilege of doing a certain thing or performing a certain act as well as engaging in a certain business, profession or calling. 33 Am. Jur., Licenses, Section 2; **City of Enterprise vs. Fleming,** 240 Ala. 460, 199 So. 691, 692.

In **Sanford vs. City of Clanton,** 244 Ala. 671, 15 So. 2d 303 and **Sanford Service Company vs. City of Andalusia,** 256 Ala. 507, 55 So. 2d 856, the defendants in those cases were delivering their own products (motor fuels) which they were engaged in selling. Neither of the defendants were motor carriers or engaged in the transportation business. They made deliveries in their own trucks, delivering their own products in Clanton and in Andalusia, respectively.

In both instances the defendants were held to be subject to the license tax levied on the privilege of making deliveries of petroleum products in those cities. Also of importance is the fact that an examination of the city ordinances involved in those cases reveals that they are substantially the same as the Trussville license ordinance hereunder consideration. In fact, all of the ordinances of this type appear to follow a uniform pattern which

I understand has been suggested by the Alabama Association of Municipalities. Although the cases of **Sanford vs. City of Clanton**, supra, and **Sanford Service Company vs. City of Andalusia**, supra, relate principally to a question of interstate commerce, it was very obviously conceded in both cases and also recognized by the court that the ordinances involved were not limited in scope to persons or concerns engaged only as motor carriers or in the transportation business, but covered anyone making such deliveries in those cities.

The Trussville license which is hereinabove quoted at length in the reference to your second letter is expressly said to apply to **"any person, firm, corporation, or motor transportation company unloading, delivering or disposing of any goods,** wares, merchandise or produce..." (Emphasis added.)

This imposition is then a license tax levied on the privilege of "any" of the persons or concerns described unloading, delivering or disposing of goods or merchandise in the City of Trussville. It is very broad in its scope in this respect and is not limited or confined to persons or concerns engaged in the business of making deliveries as a part of their own motor carrier or transportation business.

The court in **Sanford vs. City of Clanton**, 244 Ala. 637, 15 So. 2d 303, 304, made the following observation in this respect concerning the very similar license ordinance there under consideration:

> "The challenged schedule is made applicable **to all** who engage in such business within the corporate limits of the municipality." (Emphasis added.)

The Trussville ordinance is expressly said to apply without any limitation to "any" person or concern making such deliveries whether they own the produce delivered or not, or whether they are delivering to their own stores or places of business or not, where the goods or merchandise involved is "transported from a point outside the City of Trussville to a point inside the corporate limits of said City."

Moreover, there appear to be no provisions in the ordinance or otherwise by statute in this State which would exempt or exclude said persons or concerns from the operation of this ordinance. Exemptions from taxation are to be very strictly construed against the person claiming them, and cannot be granted unless clearly provided for. **Bowman vs. State Tax Commission**, 235 Ala. 190, 178 So. 216; **Curry, Commissioner of Revenue vs. Reeves**, 240 Ala. 14, 195 So. 428; **Brown Ins. Commissioner v. Protective Life Ins. Co.**, 188 Ala. 166, 66 So. 47; **State vs. Bay Towing and Dredging Co.**, 264 Ala. 187, 85 So. 2d 890.

The foregoing being considered, your first question is answered in the affirmative. Any person or concern who exercises the privileges described

by the license ordinance within the corporate limits of the City of Trussville is liable for the tax, including the large chain grocery concerns to which you refer as well as the Associated Grocers of Alabama, regardless of whether or not they are unloading or delivering their own produce or property or delivering to their own stores or places of business.

The Associated Grocers of Alabama is a corporation, and, although also a co-operative, is a separate and distinct legal entity from its stockholders. Delivery by an association to one of its stockholders or members would not be a delivery to itself or to one of its own stores. **Warrior River Terminal Company vs. State,** 257 Ala. 208, 58 So. 2d 100; **Moore and Handley Hardware Co. v. Towers Hardware Co.,** 87 Ala. 206, 6 So. 41, 43; **First National Bank of Gadsden v. Winchester,** 119 Ala. 168, 24 So. 351.

Your second question is answered then in the negative.

Very truly yours,

JOHN PATTERSON
Attorney General

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